



Department of Budget and Management
**GOVERNMENT PROCUREMENT POLICY
TECHNICAL SUPPORT**

NPM No. 13-2011

21 June 2011

ENGR. EDWIN V. REGALADO
Chairperson, Bids and Awards Committee - A
DAVAO CITY WATER DISTRICT
Km. 5, J.P. Laurel Ave., Davao City

Dear Engr. Regalado:

We respond to your letter dated 28 March 2011, which we received on 18 April 2011, inquiring on the following:

1. Whether procuring entities are allowed to limit the procurement of items only to those manufactured by certain countries but with no reference to a specific brand;
2. Meaning/Implication of the phrase "unless specified in the BDS" stated under Clause 7¹, Section II of the Philippine Bidding Documents (PBDs) in light of the restriction as to origin of goods; and
3. Whether Section 18 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 prohibiting reference to brand names applies as well as to specifications based on country of origin.

As represented, the Davao City Water District intends to procure equipment/trucks that are of tested quality, durability, and workmanship at the lowest reasonable price possible. Per its observation, there are emerging manufacturers in the market openly selling equipment/trucks originating from a certain country at very cheap price but with untested long-term performance and after-sales services.

With regard to the first concern, please note that as provided under Section 43.1.1 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, consistent with the obligations of the Philippines under international treaties or agreement, goods may be obtained from domestic or foreign sources and the procurement shall be open to all eligible suppliers, manufacturers, and distributors. As such, although procuring entities are given leeway in formulating the specifications in the terms of reference, they cannot limit the origin of goods to their preferred countries of origin to the exclusion of other countries.

¹ Letter originally referred to Sec. 1.27 of the PBDs, 3rd Edition

For guidance, the technical specifications may include the required quality, durability, and workmanship based on recognized local and international standards for the industry. Where other particular standards are used, whether national standards or other standards, the specifications must also state that the equipment, materials, and workmanship that meet other authoritative standards, and which ensure at least a substantially equal quality than the standards mentioned, will also be acceptable.² Thus, if the objective of the procuring entity is to procure equipment/trucks with tested quality and durability and workmanship, it may indicate in its bid data sheet the specifications they may deem fit, without limiting, however, the countries of origin of said equipment/trucks.

Anent your second concern, the phrase “unless specified in the BDS” seeks to allow adoption of conditions on origin of goods depending on the institution funding the procurement activity in view of the fact that the PBDs for Goods is harmonized with Development Partners which have differing rules on origin of goods. As discussed above, our policy is to allow goods to be obtained from domestic or foreign sources. In this regard, the BDS provision for Clause 7, Instructions to Bidders of the PBDs for Goods state “no further instructions.”

In this light, the rule on origin of goods provided in said Clause 7 may be changed depending on the applicable rule of the institution funding the procurement activity. In cases of projects governed by RA 9184 and its IRR, the rule provided in Section 43.1.1 thereof applies.

As regards your last concern, please be informed that Section 18 of the IRR is limited to the prohibition on specifying the brand name of the items to be procured and does not apply to prohibition on restriction of sources by country of origin.

Although said section mandates specifications to be based on performance requirements, it does not provide basis for restricting country of origin. As discussed above, the proven quality, durability, and workmanship of the equipment to be procured may be tested, not on the basis of its country of origin, but on the basis of recognized industry standards.

We hope to have provided sufficient guidance on the matter. Should you have further concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
OIC-Executive Director III

² Section VII, Procurement of Goods, Philippine Bidding Documents, 4th Edition